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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,959	04/07/2006	Johan Elgebrant	1027651-000503	8429
21839 7590 11/25/2009 BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			EXAMINER BYRD, LATRICE CHENELL	
			ART UNIT 3782	PAPER NUMBER
			NOTIFICATION DATE 11/25/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/574,959	<b>Applicant(s)</b> ELGEBRANT, JOHAN	
	<b>Examiner</b> LATRICE BYRD	<b>Art Unit</b> 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 11-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 4, 6-8, 12 and 14-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayward (USPN 5,353,943).

3. In re claim 1, Hayward discloses a packaging container comprising a first portion (10) formed of a first material or material combination (plastic, column 6, lines 7-10), a second portion (100) formed of a second material or material combination (metal, column 5, lines 29-34) different from the first material or material combination, and a pouring opening (24) formed in said first portion, wherein the first portion is further provided with a tearing line (67,69) extending essentially from the pouring opening towards the interface between the first portion and the second portion and essentially along an entirety of said interface.

4. In re claim 2, Hayward discloses a packaging container wherein the first portion (10) of the container is generally formed of a plastic material.

5. In re claims 4 and 12, Hayward discloses a packaging container wherein the tear line (67,69) is defined by a weakening line extending essentially from the pouring opening towards the interface between the first portion (10) and the second portion (100) and essentially along the complete extension of said interface.

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6. In re claims 6 and 14, Hayward discloses a packaging container wherein the weakening line (67,69) is a portion of smaller wall thickness than surrounding portions, the inferior wall thickness being formed by a groove on the outside of the first portion.

7. In re claims 7 and 15, Hayward discloses a packaging container wherein the weakening line (67,69) is a portion of smaller wall thickness than surrounding portions, the inferior wall thickness being formed along the portion of the weakening line extending from the pouring opening to the interface by a groove on the inside of the first portion, and along the interface by a groove shown on the outside of the first portion (best seen in figures 3 and 4).

8. In re claims 8 and 16-18, Hayward discloses a packaging container wherein the pouring opening is shaped such that a pull tab (33) is formed on either side of the point where the tear line (67,69) intersect the edge of the pouring opening.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayward (USPN 5,353,943).

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11. In re claims 3 and 11, Hayward fails to disclose the second portion of the container being formed of fibre based packaging laminate. Official Notice is taken that using a fibre based material is a notoriously well-known feature for forming a container. Therefore, it would have been obvious to a person having ordinary skill in the art to have formed the second portion of the container of fibre based packaging laminate in order to easily fold the material into a package for pouring products.

12. Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayward (USPN 5,353,943) in view of Larrison (USPN 4,942,974).

13. In re claims 5 and 13, Hayward fails to disclose a packaging container wherein the first portion of the container is formed by injection moulding of a plastic material into a mould. Larrison teaches the use of injection molded plastic material. It would have been obvious to one of ordinary skill in the art at the time of the invention to have formed the first portion of the container of Hayward with injection molded plastic material as taught by Larrison in order to package food products in inexpensive "tub" type containers (column 1, lines 9-14).

### ***Response to Arguments***

14. Applicant's arguments filed 6/9/09 have been fully considered but they are not persuasive. In response to applicant's argument that the tear line (67,69) of Hayward does not extend essentially from the opening 24 toward the interface, Examiner does not agree. The claim states the tearing line extends "essentially" from the pouring opening towards an interface and "essentially" along an entirety of the interface.

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“Essentially” may be defined as “primarily” or “mainly” or “basically.” None of these words mean completely. These words have been identified to mean and associated with the terms “mostly” and “generally.” which does not imply that the tear line is extending around the entire interface. The tear line of Hayward is essentially extending along an entirety of the interface.

15. In response to applicant's argument that the first portion and the second portion are not formed from a different material or material combination, Examiner does not agree. Hayward clearly states two different materials or rather material combinations used for the first and second portions. The first portion is formed from a plastic (column 6, lines 7-10) and the second portion formed of a metal (column 5, lines 29-34).

### ***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LATRICE BYRD whose telephone number is (571)270-5703. The examiner can normally be reached on Mon-Thu 9:30am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LATRICE BYRD/  
Examiner, Art Unit 3782

/Gary E. Elkins/  
Primary Examiner, Art Unit 3782